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SIPDIS

DEPT FOR WHA/CAR (B. PREMONT)  
DEPT FOR EEB/IFD/OIA (H. GOETHERT AND K. BUTLER)  
DEPT FOR L/CID (P. PEARSALL)  
LA PAZ FOR A/DCM (C. LAMBERT)

E.O. 12958: N/A

TAGS: [CASC](#) [EINV](#) [KIDE](#) [OPIC](#) [ECON](#) [DR](#)

SUBJECT: 2009 REPORT ON INVESTMENT DISPUTES AND EXPROPRIATIONS  
CLAIMS FOR THE DOMINICAN REPUBLIC

REF: STATE 49477

¶1. Below is the 2009 submission of the Report on Investment Disputes and Expropriations Claims for the Dominican Republic. The same will be sent via e-mail with all changes from the 2008 marked as well as a list of the claimants.

¶2. The United States Government is presently aware of twenty (20) outstanding claims (including two new claims in 2009 and two closed in 2008) by US persons/entities against the Government of the Dominican Republic (government). In mid-2005 a USAID-sponsored consultant finished working with the Dominican Government on implementing a system for evaluating and resolving claims through the use of bonds. In 1999, Law 104-99 was passed, offering to claimants whose disputes arose on or before August 16, 1996, the option of circumventing the traditional method of claim resolution (at the "Bienes Nacionales"), and instead to seek compensation from a specially appointed Internal Public Debt Evaluation Commission, provided the claimants are willing to accept payment in bonds. A total of 247 claims were solved under Law 104-99 with USAID assistance. This law expired on November 9, ¶2005.

¶3. Action on resolution of claims slowed when the Fernandez administration took office in August 2004. The Office of Public Credit within the Ministry of Finance is responsible for expropriations and investment disputes. The current Director has maintained his position for nearly three years. The Office of Public Credit states that many (13) claimants have either never registered their claim formally with the Office of Public Credit or the claims have not been passed to the Office of Public Credit from other Government offices. Before claims are passed to the Office of Public Credit, the claim must be recognized by the Government entity responsible for the expropriation. Following this step, the Minister of Finance and the Debt Evaluation Commission must decide to add the case to the Commission's case load. No cases have been added since 2005. The Embassy raises these expropriation and investor dispute cases with the Government on a regular basis. In addition to frequent visits to the Ministry of Finance, the Ambassador sent letters to the President, the Minister of Finance and the legal advisor to the President requesting resolution of U.S. claims. All information provided herein was last updated on June 11, 2008.

¶4. a. Claimant A

b. 1999

c. Eight independent power producers (IPPs), four of which are US-owned, provided approximately 30 percent of the Dominican Republic's electricity. In 1999, the IPPs entered

into a "Definitive Agreement" with the government under which an escrow account was to have been established to permit the capitalization of the State electricity company's (Corporacion Dominicana de Empresas Electricas Estatales (CDEEE)) power generation and distribution facilities. This escrow account was intended to receive payments from the new distribution companies and proceeds were to have been used to pay the IPPs for both current invoices and accumulated arrears. The government did not live up to its commitment to implement this escrow arrangement; CDEEE failed to keep its payments current to the IPPs; and the government breached several agreements to make up the shortfall, which exceeded \$100 million.

In September 2002, the government announced that seven of the eight IPP's had agreed in principle to give up their existing long-term contracts. To date, the government has successfully renegotiated only one new contract with these IPP's. In February 2004, the government and CDEEE signed a short-term agreement with two of the Claimants whereby the government agreed to increase tariff rates, make payments on current invoices and negotiate accumulated arrears. Although tariff rates were increased CDEEE and the government have continuously failed to make timely payments to Claimants A, resulting in cash flow problems and credit difficulties, and they are presently in default to Claimants A, and other generating companies in the sector, close to \$400 million, in addition to the accumulated arrears, which stand at just below \$200 million. Of additional concern, the contracts with Claimants A are backed, in part, by guarantees. Should Claimant A's lenders call those guarantees, the government faces liability of more than \$425 million.

The Government has informed Claimants A that it recognizes the outstanding debts owed and in mid-2008, Claimants A reached agreements with the distribution companies regarding the repayment of the accumulated arrears. Monthly payments began in September 2008 and have continued as accorded since then. Payment are scheduled to continue through March 2016. Some of the Claimants A have also accepted \$250 million in bonds to pay part of the overdue current invoices. The Ambassador sent a letter to President Fernandez in November 2008 urging payment of invoices. No response was received.

15. a. Claimant B

b. 1998

c. Claimant B purchased land located on the access road to Santo Domingo's Las Americas Airport. In 1998, the Public Works Department built the ramp for a highway overpass on Claimant B's land. Embassy contacted Public Works on behalf of Claimant B and was informed that Claimant B will be included in whatever settlement (i.e., cash payment or relocation) was to have been offered to Dominican landowners affected by this construction. The government has yet to authorize funding to settle Claimant B's claim, and it fell too late to be included in the original bond issuance program. A possible government initial settlement offer will likely be in the form of bonds. No time has been set for a decision. Although the Embassy continues to discuss this claim with the Dominican government, the claimant has not contacted the Embassy in over three years, and the Office of Public Credit reported in May 2009 that there is currently no open claim registered in their files. Embassy personnel have tried to contact the claimant, but the claimant could not be reached.

16. a. Claimant C

b. 1994 and various

c. In 1996, Claimant C discovered that various components of the government had, over time, built facilities (including an airport runway extension) on a parcel of land near the town of Barahona that Claimant C's company had owned since the 1920s. The Embassy raised this case on numerous occasions with senior Dominican officials and facilitated meetings between Claimant C and the government. In 1999, Claimant C accepted an offer of settlement in partial payment of the claim of approximately

\$1.5 million, which the government paid in three equal payments. Efforts by Claimant to recoup the remainder of its claim were reportedly rebuffed by the government, which took the position that the claim had been satisfied in full. When the Embassy raised this claim with the Dominican government, the Office of Public Credit stated in May 2009 that there is currently no open claim registered in their files. The claimant has not contacted the Embassy in over three years. Embassy personnel have tried to contact the claimant, but the claimant could not be reached.

17. a. Claimant D

b. 1991

c. In 1988, the government asked Claimant D to build 1,000 homes for sugar cane workers. Claimant D never signed a contract with the government. Materials were shipped to the Dominican Republic for the first phase of construction (30 homes) and Claimant D had invoices showing that the materials arrived. In 1989, Claimant D was informed that, due to heavy rains and a bad crop, construction of the homes would be delayed. Claimant D arranged with port authorities to have the materials remain in the port until construction could begin. In 1991, Claimant D discovered that all of the materials had disappeared. Claimant D alleged that some of the materials were auctioned off, and some given to government entities. Claimant D estimates losses at \$1.3 million. Claimant D's case was disqualified under Law No. 104-99. Claimant D has since initiated legal action in a Dominican court.

Embassy officials have been in direct contact with Claimant D and his lawyer. In September 2008, the Office of Public Credit informed EconOff that Claimant D's case could not be paid with bonds because the debt could not be verified by the debtor institution (National Sugar Board) as this institution does not have original documents or a registration of the debt. In May 2009, the Office of Public Credit told EconOff that the National Sugar Board will not assume responsibility for the debt because the goods were lost or stolen before the Board ever received them. EconOff relayed this information to Claimant D and his lawyer via telephone and email, both of whom were already aware of this assertion.

18. a. Claimant E

b. 1983

c. Claimant E is the owner of land with an assessed value of approximately \$1 million in the Puerto Plata area of the Dominican Republic. In 1983, the government seized the land, which is now part of the Isabel de Torres Scientific Preserve. Claimant E sought compensation, but none was approved. According to Claimant E, the government previously valued the land at \$330,000. Claimant E reported that it has an assessment valuing the land at approximately \$990,000. Claimant E is willing to negotiate, but to date there has been no resolution of this dispute.

Although the Embassy continues to discuss this claim with the Dominican government, the claimant has not contacted the Embassy in over two years, and the Office of Public Credit reported in May 2009 that there is currently no open claim registered in their files. Embassy personnel have tried to contact the claimant, but the claimant could not be reached.

19. a. Claimant F

b. 1980's

c. The government expropriated Claimant F's property in the 1980's, which Claimant F valued at several million dollars. To date there has been no resolution. Although the Embassy continues to include the matter in all discussions of investment disputes with the government, the claimant has not contacted the Embassy in over two years. The Office of Public Credit stated in May 2009 that there is currently no

open claim registered in their files. Embassy personnel have tried to contact the claimant, but the claimant could not be reached.

¶10. a. Claimant G

b. 1986

c. Pursuant to a presidential decree in 1986, the government expropriated 823,495.70 square meters of land belonging to Claimant G for use in the construction of the Maria Montez Airport in Barahona. Claimant G has sought compensation for the land, improvements to the land, crops located thereon, and for three million cubic meters of raw materials extracted from the land. The claim was brought to the attention of the Embassy in May 2001. To date there has been no resolution. Although the Embassy continues to discuss this claim with the Dominican government, the claimant has not contacted the Embassy in over two years. The Office of Public Credit stated in May 2009 that there is currently no open claim registered in their files. Embassy personnel have tried to contact the claimant, but the claimant could not be reached.

¶11. a. Claimant H

b. 1987

c. Claimant H's contract claim involves the unpaid commission for loan guarantees on a real estate transaction brokered in ¶1976. Claimant H asserts he is entitled to 2% of \$12 million, the loan guarantee amount. Claimant H has a default judgment from the US Court of Appeals for the Ninth Circuit, entered in 1987, for \$240,000. Claimant H asserted that with interest, the claim was valued at approximately \$2 million. To date there has been no resolution. Although the Embassy continues to discuss this claim with the Dominican government, the claimant has not contacted the Embassy in over a year. The Office of Public Credit stated in May 2009 that there is currently no open claim registered in their files. Embassy personnel have tried to contact the claimant, but the claimant could not be reached.

¶12. a. Claimant I

b. 2003

c. In 1998 Claimant I and family responded to advertisements by the Dominican Republic seeking US investment by purchasing two adjacent parcels of land located in Cumayasa, San Pedro de Macoris. In March of 2003 Claimant I, while visiting his property, discovered that almost 700 mature coconut trees had been bulldozed and other property destroyed by the Dominican Consejo Estatal de Azucar (CEA). When Claimant I contacted the CEA office in Santo Domingo to request an immediate evacuation of the area a CEA engineer recommended that Claimant I instead request that the properties be replaced with other unspecified parcels in unspecified areas, citing the CEA had incurred expenses in grading the land and uprooting the fruit trees. Claimant I immediately contacted a local attorney and initiated legal action in a Dominican Court. The matter was reportedly pending a judicial decision.

Although the Embassy continues to discuss this claim with the Dominican government, the claimant has not contacted the Embassy in over two years. The Office of Public Credit stated in May 2009 that there is currently no open claim registered in their files. Embassy personnel have tried to contact the claimant, but the claimant could not be reached.

¶13. a. Claimant J

b. 1992

c. In 1991 as an insurer to an international company with a contract to provide the sale of power station spare parts for the Dominican Corporacion Dominicana de Empresas Electricas Estatales (CDEEE), Claimant J paid \$2,829,112.63 to the

insured and accepted transfer of all rights to settlement in the dispute with the Dominican government. On May 12, 1992 an Italian court ruled in favor of Claimant J and ordered the payment of approximately \$5,369,781 (original sum plus accrued interest and expenses) by the CDEEE/government. In early 2003, government officials sought to retain a law firm in the US to negotiate a final settlement with Claimant J. The retainer was never completed. On May 27, 2004 the Ministry of Finance's Legal Department issued its opinion on the issue.

The Embassy had been in repeated contact with government officials in regard to this claim and brought it to the specific attention of the Ministry of Finance. In 2006 the government issued an offer of \$3,758,275 dollars. The Claimant entered into negotiations with CDEEE in January 2008 to reach resolution on the payment of interest. An agreement between the Claimant and CDEEE was reached on January 22, 2008 in the amount of \$7,530,086.67, recognizing interest charges calculated through June 30, 2006. This agreement was sent to the Ministry of Finance for processing. The Expropriations Commission of the Ministry of Finance, which has the final decision on payment, referred the case to the Contraloria (Comptroller's Office) in March 2008 for an opinion citing a Ministry of Finance statutory inability to pay interest charges on claims. In July 2008, the Comptroller's Office determined that no finding could be made on the claim because neither party remained in possession of original copies of certain documents relating to the 1991 rights transfer or the initial 1983 contract between the CDEEE and the insurer. The Comptroller's Office recommended that no payment be made. The Office of Public Credit told the Embassy it would follow the Comptroller's recommendation.

Claimant J has obtained a confession of judgment and is presently seeking a lien on the CDEEE in order to collect the amount accorded in January, 2008. In May 2009, the Office of Public Credit reiterated its inability to pay interest charges unless an original copy of the contract can be produced evidencing a contractual interest scheme.

14. a. Claimant K

b. 1992

c. Claimant K owned 400 square meters of land bordering the road to the Santo Domingo Las Americas Airport. The land was expropriated by the government in the 1990's for highway expansion. Claimant L's claim is being held up in the Ministry of Finance's Legal Department. In order for Claimant K to receive compensation, the Legal Department must correct a clerical error on the title, which it committed at the time of the first disbursement. The original disbursement incorrectly included the entire property instead of just the back-lot. Although Claimant K received reimbursement for his back-lot property, valued at RD 2,051,724 (paid in bonds), he has yet to receive payment for the front lot of his property valued at RD 360,000. The Embassy has raised this case repeatedly with the Office of Public Credit, and has received updates regarding the Legal Department's work to remedy this error. In May 2009, the Office of Public Credit told EconOff that once Claimant K signs the title, in possession of the appropriately valid power of attorney, the title will be passed to the Land Tribunal for processing. Claimant K has expressed frustration with the delays in the process but appears satisfied that the error will eventually be corrected and payment will be made.

15.a. Claimant L

b. 2003

c. Claimant L is involved in a contractual dispute with the Dominican Attorney General concerning a telephone system for Dominican prisons. Claimant L's company, in partnership with a California-based equipment maker, is having trouble activating the system in the prisons due to bureaucratic delay in the Attorney General's Office. His telephone equipment has already been installed in the central offices of the Attorney



General and the Najayo, Puerto Plata and La Victoria prisons. In 2004, when representatives of Claimant L went to activate the equipment at the central office, they were informed they could not operate the equipment until they had a letter of authorization from the Attorney General's office. Claimant L signed a contract with the government on Sept 4, 2003. A new presidential administration began on August 16, 2004 and was reportedly reluctant to honor the agreement of the previous administration. Several years ago the Embassy met with the Deputy Attorney General for Prisons and the Dominican telecommunications regulating agency of behalf of Claimant L.

Although the Embassy continues to discuss this claim with the Dominican government, the claimant has not contacted the Embassy in over two years. The Office of Public Credit stated in May 2009 that there is currently no open claim registered in their files. Embassy personnel have tried to contact the claimant, but the claimant could not be reached.

¶16. a. Claimant M

b. 2005

c. On May 7, 2004, Claimant M and the company he represents signed a contract with the government agency, (Corporacion Dominicana de Empresas Estatales - CORDE), granting Claimant M and his company Agregados del Lago the right to exploit a government-owned salt mine in the area of Las Salinas, Province of Barahona, for a period of 25 years. Claimant M alleges the government is not honoring the contract and is denying his company access to the area.

In March 2005, the Comision de Reforma de la Empresa Publica (CREP) took the mine from Claimant M and allegedly did not permit him or his company access to the mine. CREP, which is responsible for handing over state companies to private enterprises, stated to Claimant M that his contract was invalid because no public concession occurred, which would have required an approval by the Dominican Congress. CREP has since then maintained control of the mine.

Claimant M asserts that he has invested \$650,000 in equipment and other investments including contractual payments and tax payments to the government. The contract requires Claimant M to invest \$1.5 million in the mine over the first five years of the contract and then \$150,000 every year thereafter. The Embassy contacted CREP, CORDE, as well as the General Director of Mining, to seek a resolution on the behalf of Claimant M in 2006 and 2007. CREP provided the Embassy their legal case as to why Claimant M's contract is not valid.

The Embassy discussed this case in 2007 with the Department's L Bureau and recommended to Claimant M that he should exhaust all channels to include legal channels to resolve this case. Claimant M asserted in early 2007 that he planned to take his case to court. However, Claimant M has taken no additional action as of June 2009. Since the claim has not been validated by the relevant government agency, the Office of Public Credit has no open claim in its files as of May 2009.

¶17. a. Claimant N

b. 2002

c. Claimant N entered a contract with Unidad Corporativa Minera (UCM, a government-owned entity closed in 2004) to determine the economic viability of sulphate based gold reserves at the Pueblo Viejo mine. UCM contracted Claimant N to conduct an environmental study, fish assessment, tailings dam sitings and an overall technical review. The job was finished in June 2002, but UCM failed to pay Claimant N more than \$125,629. Embassy officials have been in contact with UCM and the Director General de Minería. Obtaining payment from the government has been difficult in part because the UCM no longer exists and changes at the Office of Public Credit have slowed processing.

Although the Embassy continues to discuss this claim with the

Dominican government, the claimant has not contacted the Embassy in over two years. The Office of Public Credit stated in May 2009 that there is currently no open claim registered in their files. Embassy personnel have tried to contact the claimant, but the claimant could not be reached.

¶18. a. Claimant O

b. 2004

c. Claimant O had approximately 251 acres in the Parque Nacional del Este in the southeastern Bayahibe area expropriated by the Ministry of Environment in 2003. The Ministry of Environment has verified that Claimant O's land was expropriated in 2003, and not in the 1970s as originally alleged, from Parque Nacional del Este. The Office of Public Credit sent a land assessor to do a final independent determination that the expropriated land falls within the Parque Nacional del Este. In May 2009, the Office of Public Credit told EconOff that the assessor's report is complete and that the Ministry of Finance will proceed to make an offer to the Claimant. As of June 2009, the Claimant had not received a settlement offer. The Embassy has been in constant communication with the Claimant and the Office of Public Credit regarding this case.

¶19. a. Claimant P

b. 2003

c. Claimant P states that the land their family owned in Santo Domingo was expropriated by the government of the Dominican Republic. The file is located at the Land Tribunal. Since 2003, Claimant P has tried to get reimbursed for the expropriated property. The Embassy raised this claim with the Office of Public Credit in May 2009 and was informed that the case is pending authorization by the Minister of Finance and the Internal Public Debt Evaluation Commission to be included in the Commission's registry. Once this process takes place, the debt can be paid. The Embassy remains in contact with the Claimant and the Office of Public Credit concerning this claim.

¶20. a. Claimant Q

b. 2000

c. Claimant Q states that the land their family owned near La Ruina was expropriated by the government of the Dominican Republic to build a road. The government also allegedly dumped landfill on Claimant Q's property. Claimant Q states that the government promised to give them a check, but reportedly never received this check. Although the Embassy continues to discuss this claim with the Dominican government, the claimant has not contacted the Embassy in over three years. The Office of Public Credit stated in May 2009 that there is currently no open claim registered in their files.

¶21. a. Claimant R

b. 1974

c. Claimant R states that the land and businesses their family owned were expropriated by the government of the Dominican Republic in the early 1960's. The following is a list of the companies that were operated by Claimant R: Industria Nacional del Vidrio, Sisal Dominicano, Consorcio Algodonero, Sacos y Tejidos Dominicanos, Fabrica de Sacos y Corderleria, Sal y Yeso Dominicanos. A Supreme Court decision was made in 1970 in favor of Claimant R. The government reimbursed Claimant R for a portion of the land but did not reimburse the family for their businesses and other properties. Claimant R states that the only reimbursement the family has received amounts to roughly 10 percent of the estate that was expropriated. The Supreme Court decision estimated the amount of investment for the businesses at USD 34 million at the time of confiscation, which was over 30 years ago.

The Office of Public Credit stated in May 2009 that there is currently no open claim registered in their files. According to the Director of Public Credit and the President's counsel, only President Fernandez can authorize reimbursement, even though a Supreme Court decision demanded this action over 35 years ago.

Claimant R was not a U.S. citizen at the time of expropriation. Some of his children are U.S. citizens and have pursued this case with the Embassy, the State Department, and U.S. congressmen after the death of their father in 1989. Most Recently, Claimant R met with Ministry of Industry and Commerce officials in August 2008. The Claimant told the Dominican government of its intention to pursue arbitration under CAFTA-DR provisions if an agreement could not otherwise be reached. Claimant R said the amount of its claim was US\$1.437 billion, but expressed a willingness to accept a combination of cash, bonds and properties in order to settle. The Claimant contacted the State Department in April 2009 to advise that they would seek \$800 million in compensation and would not file a claim under CAFTA-DR but rather pursue a Section 301 claim in U.S. courts.

¶22. a. Claimant S

b. 1978

c. Claimant S states that she and her late husband acquired 1.5 acres of land from the Dominican Social Security Institute (IDSS) in 1976. The land was expropriated by presidential decree in 1978. No compensation was paid at that time or subsequently and the government currently rents the land for use by a hotel. Claimant S has made contacts at various levels of the government but has not received any response or compensation for the expropriated land. The Claimant was not a United States citizen at the time of expropriation but has since naturalized.

The Embassy raised this claim with the Office of Public Credit in March 2009 and was informed that the Office does not possess any knowledge or information of this claim and that the Claimant must raise the claim to the Minister of Finance. The Embassy has communicated this information to the Claimant.

¶23. a. Claimant T

b. 2001

c. Claimant T was contracted by the state-owned Santo Domingo Water and Sewage Corporation to provide professional supervision services alongside a Dominican company. Claimant T was also hired in conjunction with a different Dominican company by the National Institute of Hydraulic Resources. Claimant T seeks a total of \$1.36 million in unpaid invoices for the services rendered.

The Ambassador raised this issue in letters to the two debtor entities and to the Minister of Finance in January 2009. The Embassy also raised this claim with the Office of Public Credit in March 2009 and was informed that the Office does not possess any knowledge or information of this claim.

BULLEN